

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DONALD L. JONES, )  
 )  
 Plaintiff, ) NO. CV-05-3110-LRS  
 )  
 v. ) ORDER  
 )  
 STATE OF WASHINGTON, et al, )  
 )  
 Defendants )

**BEFORE THE COURT** is Defendants' Fed. R. Civ. P. 12(b) Motion To Dismiss For Lack of Jurisdiction For Improper Service (Ct. Rec. 17) filed February 21, 2006; Plaintiff's Motion for Ex-Parte Hearing To Determine Constitutionality of State Statute (Ct. Rec. 9) filed on February 3, 2006; Plaintiff's Motion for Subpoena and Joinder of Parties (Ct. Rec. 10) also filed on February 3, 2006; Plaintiff's Summary Judgment Motion (Ct. Rec. 15), filed on February 13, 2006; and Plaintiff's Summary Judgment Motion (Ct. Rec. 21), filed on March 23, 2006, with oral argument requested on May 18, 2006 at 2:30 p.m.

Defendants complain that *pro se* Plaintiff Donald Jones has failed to satisfy the service requirements of FED. R. CIV. P. 4. First, Defendants claim that Jones failed to properly serve a summons together with a copy of the complaint in accordance with the requirements of FED. R. CIV. P. 4(c). Further, Defendants

1 complain that Jones failed to comply with RCW 4.92.020. Defendants  
2 indicate Plaintiff filed a Return of Service form that evidences  
3 the fact Defendants were served by First Class Mail. Ct. Rec. 6.

4 **DISCUSSION**

5 The Court finds that Plaintiff has not properly served any of  
6 the named Defendants in accordance with federal and state law. If  
7 the plaintiff fails to properly serve the summons and complaint  
8 within 120 days of filing the complaint, Rule 4(m) directs the  
9 Court to dismiss the case. However, Rule 4(m) provides that  
10 dismissal for failure to serve is only appropriate in the absence  
11 of good cause for the plaintiff's failure to show why service was  
12 not made within the 120-day period. 4B CHARLES ALAN WRIGHT &  
13 ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1137 at 340-69  
14 (3d ed.2002) [hereinafter "WRIGHT & MILLER"].

15 Plaintiff filed his Complaint on December 20, 2005 and his  
16 Amended Complaint on January 4, 2006. The Court notes that the  
17 plaintiff is *pro se*. While the plaintiff has not met the service  
18 requirements of Rule 4, he has attempted to serve the defendant.  
19 Ct. Rec. 6. This demonstrates that plaintiff's failure to  
20 properly serve the defendant is not wholly due to a lack of  
21 diligence.

22 The Court finds that the record demonstrates sufficient good  
23 cause for the plaintiff's failure to serve the defendant within  
24 the 120-day requirement of Rule 4(m). See 4B WRIGHT & MILLER §  
25 1137 at 342.

26 All of Plaintiff's pending motions are, however, denied  
27 without prejudice as this Court lacks personal jurisdiction over  
28 ///

1 the pending matters due to Plaintiff's failure to effect proper  
2 service on the Defendants. Accordingly,

3 **IT IS ORDERED** that:

4 1. Defendants' 12(b) Motion To Dismiss For Lack of  
5 Jurisdiction For Improper Service (Ct. Rec. 17) filed February 21,  
6 2006 is **DENIED without prejudice**. The plaintiff shall be afforded  
7 the opportunity to effect service of process upon all Defendants  
8 properly, in accordance with Rule 4 and RCW 4.92.020, no later  
9 than **April 24, 2006**. Failure to properly effect service of  
10 process by this deadline may result in dismissal of this case.

11 2. Plaintiff's Motion for Ex-Parte Hearing To Determine  
12 Constitutionality of State Statute, **Ct. Rec. 9**, filed on February  
13 3, 2006 is **DENIED without prejudice**.

14 3. Plaintiff's Motion for Subpoena and Joinder of Parties,  
15 **Ct. Rec. 10**, also filed on February 3, 2006 is **DENIED without**  
16 **prejudice**.

17 4. Plaintiff's Summary Judgment Motion, **Ct. Rec. 15**, filed  
18 on February 13, 2006 is **DENIED without prejudice**.

19 5. Plaintiff's Summary Judgment Motion, **Ct. Rec. 21**, filed  
20 on March 23, 2006, is denied without prejudice.

21 The District Executive is directed to file this Order and  
22 provide copies to counsel and *pro se* Plaintiff.

23 **DATED** this 5th day of April, 2006.

24 *s/Lonny R. Sukko*  
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26 LONNY R. SUKCO  
27 United States District Judge  
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